

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GABRIEL and DINA CORRAL,) Case No.: 2:10-cv-00465-GMN-RJJ
)
)
Plaintiffs,) **ORDER**
)
vs.)
)
HOMEEQ SERVICING CORP., et al.,)
)
)
Defendants.)
)

This is a civil action brought by Plaintiffs Gabriel and Dina Corral against Defendant Barclays Capital Real Estate, Inc., d/b/a HomEq Servicing, erroneously sued as Homeeq Servicing Corporation (“HomEq”), relating to the foreclosure of their home. Pending before the court is HomEq’s Motion for Summary Judgment. (MSJ, ECF No. 20.) The court will grant the Motion for Summary Judgment.

I. BACKGROUND

Plaintiffs initially filed suit against HomEq in Clark County District Court alleging four causes of action: (1) promissory estoppel; (2) wrongful foreclosure/quiet title; (3) misrepresentation; and (4) preliminary/permanent injunction. (Complaint, ECF No. 1.) HomEq removed the case to this court and filed a Motion to Dismiss. (ECF Nos. 1, 5.) The court granted HomEq's Motion to Dismiss with the exception of Plaintiffs' quiet title cause of action. (Order, Oct. 6, 2010, ECF No. 15.) The court pointed out that "Old Republic recorded the NOD [Notice of Default], but there is no evidence in the public record that it had been properly substituted as trustee in place of Chicago Title before it recorded the NOD, as required by Nevada Revised Statutes section 107.080(2)(c)." (*Id.* at 9:10-13.) The court explained that "Defendant may be able to demonstrate that there was no statutory defect – and thus no unlawful foreclosure – by

1 providing evidence showing that the beneficiary or trustee, or an agent thereof, at the time Old
2 Republic filed the NOD caused Old Republic to file the NOD.” (*Id.* at 9:14-17.)

3 **II. LEGAL STANDARD**

4 The Federal Rules of Civil Procedure provide for summary adjudication when the
5 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
6 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant is
7 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that may
8 affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
9 A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to
10 return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if
11 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict
12 in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th
13 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A
14 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
15 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

16 In determining summary judgment, a court applies a burden-shifting analysis. “When the
17 party moving for summary judgment would bear the burden of proof at trial, it must come
18 forward with evidence which would entitle it to a directed verdict if the evidence went
19 uncontested at trial. In such a case, the moving party has the initial burden of establishing
20 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
21 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
22 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
23 moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
24 element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving party failed
25 to make a showing sufficient to establish an element essential to that party’s case on which that

1 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the
2 moving party fails to meet its initial burden, summary judgment must be denied and the court
3 need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S.
4 144, 159–60 (1970).

5 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
6 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
7 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
8 opposing party need not establish a material issue of fact conclusively in its favor. It is
9 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
10 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
11 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
12 summary judgment by relying solely on conclusory allegations that are unsupported by factual
13 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go
14 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
15 competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

16 At summary judgment, a court’s function is not to weigh the evidence and determine the
17 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.
18 The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn
19 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not
20 significantly probative, summary judgment may be granted. *See id.* at 249–50.

21 III. ANALYSIS

22 Under Nevada law, the power of sale must not be exercised until “[t]he beneficiary, the
23 successor in interest of the beneficiary or the trustee first executes and causes to be recorded... a
24 notice of the breach and of the election to sell or cause to be sold the property to satisfy the
25 obligation.” NRS 107.080(2)(c). This means that a valid foreclosure under Nevada statute must

1 be initiated by the beneficiary, the beneficiary's successor in interest, or the trustee, in the form
 2 of a recorded Notice of Default. Here, HomEq asserts that Old Republic was the authorized
 3 trustee who executed and caused the Notice of Default to be recorded on April 29, 2009.

4 To prove that there was no statutory defect in the foreclosure process, HomEq submits
 5 five documents recorded in Clark County¹:

6 (1) The **Deed of Trust** ("Deed") recorded on January 24, 2005. The Deed names
 7 Chicago Title Co. as trustee and Mortgage Electronic Registration Systems, Inc. ("MERS") as
 8 beneficiary solely as nominee for the Lender and Lender's successors and assigns ("Deed of
 9 Trust" Ex. 2 to MSJ);

10 (2) The **Assignment** of Deed of Trust ("Assignment") recorded on August 3, 2009. The
 11 Assignment was issued on April 28, 2009, by Mortgage Electronic Registration Systems, Inc.
 12 ("MERS"), as beneficiary/nominee for the Lender, assigning the beneficial interest to Deutsche
 13 Bank National Trust Company ("Deutsche Bank") ("Assignment of Deed of Trust" Ex. 4 to
 14 MSJ);

15 (3) The **Substitution of Trustee** ("Substitution") recorded on August 3, 2009. The
 16 Substitution was issued on April 28, 2009, by Deutsche Bank, substituting Old Republic Default
 17 Management Services ("Old Republic") as trustee instead of Chicago Title Co. ("Substitution of
 18 Trustee" Ex. 5 to MSJ);

19 (4) The **Notice of Default** ("NOD") recorded on April 29, 2009. The NOD was issued
 20 by Old Republic on April 28, 2009, purportedly as "the duly appointed Trustee," ("Notice of
 21 Default" Ex. 6 to MSJ); and

22 (5) The **Notice of Trustee's Sale** ("NOT") recorded on February 1, 2010. The NOT
 23 was issued by Old Republic ("Notice of Trustee's Sale" Ex. 7 to MSJ.)

24
 25 ¹ The court takes judicial notice of these five documents pursuant to Fed. R. Ev. 201, as they are publicly recorded documents
 filed in Clark County and Plaintiffs do not challenge their authenticity.

Plaintiffs do not challenge the validity of these publicly recorded documents. These documents demonstrate that Old Republic was granted authority as trustee by Deutsche Bank, as the beneficiary of the Deed, on April 28 or 29, 2009. (*See* Substitution of Trustee.) Old Republic recorded the Notice of Default on April 29, 2009. (Notice of Default.) This is sufficient to demonstrate Old Republic's authority to foreclose as trustee, pursuant to NRS 107.080(2)(c).

The court holds that no statutory defect in the foreclosure process is evident here, and that sufficient evidence does not exist on which a reasonable jury could return a verdict in favor of Plaintiffs. Accordingly, no injunctive relief will be granted.

IV. CONCLUSION

IT IS HEREBY ORDERED that Defendant HomEq's Motion for Summary (ECF No. 20) Judgment is **GRANTED**.

DATED this 28th day of November, 2011.

Gloria M. Navarro
United States District Judge